

By way of the Office Action mailed June 5, 2002, the Examiner rejected claims 1-3, 6-11, and 25 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,858,503 to Everhart et al., hereinafter, "Everhart." This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

Applicants respectfully point out that the prior art reference does not teach or suggest all the claim limitations of claims 1 and 8. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). See MPEP 2143.03. Everhart fails to teach a topically applied active agent located on the surface of the fibers and distributed throughout the thickness of a fabric that is at least 50 mils thick and having a ratio of weight % not exceeding 3:1 as required by claims 1 and 8. The Examiner concludes that Everhart teaches a "substrate comprising a topically applied active agent located on the surface of said fibers and differentially distributed throughout the thickness of said fabric in a gradient (col. 7, lines 60-67)." (Paper 9, pages 3-4). This interpretation of Everhart is incorrect. A close reading of Everhart and specifically col. 7, lines 60-67 indicates that the "gradient distribution of coating [is] along at least one dimension of the permeable sheet. In one embodiment, the gradient distribution of coating may be along at least two dimensions of the permeable sheet." (Everhart, col. 7, lines 63-66). The gradient distribution in Everhart is therefore along the surface of the permeable sheet (X-Y plane) and not distributed throughout the thickness (Z direction) of the fabric as required in claims 1 and 8. Everhart is explicit in teaching a "method of applying chemical charge-modifiers to individual exposed surfaces of a permeable material." (Col. 8, lines 42-43) (emphasis added). Everhart does not teach a gradient throughout the thickness of the permeable material.

The Examiner concedes that "Everhart does not seem to teach the ratio of said gradient." The Examiner accounts for this deficiency by concluding that "Everhart teaches that the gradient ratio can be modified by various application processes (col. 11, lines 57-65)." (Paper 9, page 4). Once again, the "gradient" the Examiner is referring to is the gradient upon the surface of the permeable sheet (col. 10, lines 27-30), not a gradient throughout the thickness of the fabric as claimed by Applicants. The "gradient" taught by Everhart is further illustrated in column 11, lines 25 -29 wherein Everhart states, "The liquid deposition means and the vacuum means may be configured to deposit [sic] the aqueous solution on the permeable sheet in the general form of shapes, patterns, figures, alpha-numeric characters, words, spots, pictures and the like." These examples all illustrate two dimensional distributions in the X-Y plane of the permeable sheet, not distribution throughout the thickness (Z direction) of the substrate.

Applicants note that Everhart applies a vacuum and draws "a substantial portion of the aqueous solution . . . through the permeable sheet." (col. 11, lines 38-42). However, this highlights Applicants' claim limitation that the porous substrate has a thickness of at least about 50 mils. The Examiner concedes that "Everhart does not seem to teach the thickness of said porous substrate." However, the Examiner concludes that "it would have been obvious to utilize a substrate having a thickness of at least about 100 mils" based on the "the desire to render said substrate suitable for a variety of larger filtration applications." (Paper 9, page 4) The Examiner has improperly determined that the desire for a substrate with the properties of Applicants' invention is equivalent to teaching the substrate of Applicants' invention. Once again, the Examiner concludes that the "desire to render said substrate suitable for a variety of larger filtration applications" would have made the claimed density of claim 3 obvious. The Examiner has again mistaken the desire for a given attribute as a substitute for teaching a fibrous substrate with the claim limitations of Applicants' invention.

The Examiner has not presented a *prima facie* case of obviousness based on the failure of the prior art reference to teach or suggest the claim limitations of a topically applied active agent distributed throughout the thickness of fabric in a ratio not exceeding 3:1 as recited in claims 1 and 8 and the rejection under 35 U.S.C. 103(a) is improper. See MPEP 2142. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is also nonobvious. *In Re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Claims 2, 3, 6, and 7 depend from claim 1 and claims 9-11 depend from claim 8 and are therefore also nonobvious.

By way of the Office Action mailed June 5, 2002, the Examiner rejected claims 4-5 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over US Patent Number 5,858,503 to Everhart et al. in view of U.S. Patent Number 5,972,505 or 5,733,490 to Phillips et al, hereinafter "Everhart" and "Phillips" respectively. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

As previously asserted, Everhart does not teach or suggest all the claim limitations of claims 1 and 8. "Phillips teaches the use of crimped thermoplastic staple fibers" (Paper 9, page 5). The addition of Phillips to the teaching of Everhart does not cure this deficiency.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (770) 587-8646.

Respectfully submitted,

Samuel Edward Marmon et al.

By: 

Steven D. Flack

Registration No.: 40,608

Attorney for Applicant(s)

CERTIFICATE OF MAILING

I, Steven D. Flack, hereby certify that on November 5, 2002 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

By: 

Steven D. Flack



Version with Markings to Show Changes Made

In the Claims:

Claim 25 has been cancelled.

RECEIVED
DEC 02 2002
TC 1700